

A Stakeholder's Viewpoint on the Environmental Windows Coordination Process

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Good morning. I'm going to do a little variation today, no power point. However, this has not been death by power point. These have been excellent presentations. Tom introduced me as Ellen Johnck. Actually my alias is the mud lady, and let me tell you why. I am going to read you a press release: "Alert, Alert, Alert. Call to action. Dredging of the San Francisco Bay and Delta Region is threatened by a severe problem. The problem is environmental windows and resultant seasonal restrictions imposed by the National Marine Fishery and the United States Fish and Wildlife Services.

All maintenance dredging in the bay is affected totaling some 3 million cubic yards of material, which is dredged annually. The dredging projects affected are the major transportation facilities in the bay: The San Francisco Bay Bridge, San Rafael Bridge, the Ports of Oakland, San Francisco, Richmond, Redwood City, and Benecia; our oil refinery terminals, ship repair facilities, the U.S. Army Reserve service facilities, and the primary shipping channels throughout the bay. Due to the multiple species and the overlapping seasonal restrictions, all of our dredging is now cumulatively squeezed into a three-month time period. That is our work window.

If we can't get the work finished in the window, we must apply to dredge in a restricted period, which means going through a consultation process. This process is cumbersome, time consuming and unpredictable, and usually the answer is no even after months of consultation.

The entire bay industry complex and all of the suppliers and workers dependent on it is headed for unprecedented negative economic repercussions if the present windows system and procedures remain in place.

Dredging crews and expensive equipment sit idle for six to eight months of the year waiting for the window. Frequently projects begun in the window cannot be completed within the window and must be suspended without being finished. There is not enough equipment to do the required work within a window. So many jobs just aren't being done resulting in dangerous shoaling. Actually about a year ago one of our oil tankers ran aground because the dredging project wasn't completed in time.

A serious problem with the consultation process is that NMFS and Fish and Wildlife do not have enough sound science regarding the impacts of dredging and, therefore, are forced to err on the side of conservancy without regard to the economic impacts on the industry.

For all the above stated reasons, the Bay Planning Coalition is calling for a suspension of the present windows by NMFS and the Fish and Wildlife Service. In its place we are

convening a multi-agency, all-inclusive stakeholder-based process to develop windows based on sound science and balanced with a thorough evaluation of economic and environmental risks.

In a nutshell, this is the stakeholder's perspective on windows. And this is actually a press release that is about to be issued by the Bay Planning in alliance with other industry organizations in the bay. This is very serious stuff, and we're getting political. As one of my mentors, Charlie Roberts, a long-time member of PIANC and head of the Port of Oakland and our former District Engineer in the San Francisco district, used to say, "Ellen, forget the science and the engineering. It's all political." I'll give you a little more word on that, but we know that we cannot ignore the engineering and the science.

Due to the press of time at this juncture, I am going to try and shorten by remarks and give you a brief background on the history of our dredging process. Actually the Coalition and the agencies have convened a collaborative process and have been meeting for at least ten years now. This is our LTMS program. However, it is breaking down which is why we need a new process or a reinvention of one, or maybe we haven't constructed the process right in the first place. Maybe we forgot to do what Neville pointed out, and that is we forgot to consider that the people who are opposed to dredging are just unalterably opposed to dredging. And all of our window dressing that we put on with windows mitigation really is just a palliative. So, we probably have to keep this in the back of our minds all the way through.

Many of you probably know the history of bay dredging. San Francisco Bay has been dredged annually for over one hundred years. Thank you to the United States Army Corps of Engineers. We have a terrific relationship with the Army Corps, and we stand behind them. And we hope they stand behind us every step of the way.

Two-thirds of the bay is less than 18 feet deep. In past years the volume of dredging needed to maintain the shipping channels to a safe depth has averaged between 6 and 8 million cubic yards. But recently our volume has been less,-- last year it was about 3 million cubic yards.

Historically dredged material from the navigation channels in the San Francisco Bay was disposed of throughout the bay. We bring it downstream, and it disperses. Beginning in the early '70s as environmental concerns about dredging arose, disposal began to be constricted to just a few sites. There were actually about 11 in the 70s, still chosen for their dispersement characteristics with most of the material taken to a site off of Alcatraz Island.

Although sediments were expected to dispose and disperse at Alcatraz, a large amount of dredge material started to accumulate in what was once a hundred foot deep hole. Actually that hole started to fill up about the mid '80s. We began to work with the Corps and navigation interests trying to find ways to improve the capacity of the site. Material continued to mound.

At the same time, the fishing interests were very upset. We were slurring with methods that we thought would create more dispersement. And, of course, the fishermen complained that we were creating more turbidity and they couldn't find the fish. So, they created a flotilla of boats, and encircled the disposal site and stopped all permits.

We said we've got to do something. Let's put all the agencies in one room and come up with a plan. It became apparent that not only did we need to find a way to address the issues at Alcatraz, but also we had to find alternative disposal options. At that time we also had been working for on designating a deepwater ocean site. And there was a new idea we considered. Why don't we use materials and take it back to the uplands where it was once and recreate wetlands and marshlands. We would try to show that the ports can be environmentalists, too.

So, in 1990 the Bay Planning Coalition went to the Army Corps. We went to the division engineer at that time, John Sobke, and said, "John, we need you to stay here in the bay area for one month. We want you to pull the agencies in one room, Fish and Wildlife, NMFS, the environmental groups, the stakeholders in the process, and come up with a dredging plan".

John said, "Okay, I'll do it." And he did, and that's the leadership that it took. The process was called the Long-Term Management Strategy. The Corps spent \$16 million dollars on the entire project. Here we are ten years later, and we have just completed the plan. The plan bought us time to continue to use Alcatraz under some site management techniques. In addition we conducted several studies on turbidity in the bay and how it was affecting the fish and the bioavailability of contaminants. And also the Navy helped us by providing \$7 million to identify a deepwater ocean site.

Another success was an agreement from the environmental groups that we would continue with dredging; that dredging was important; and that we should dredge in an economically feasible and environmentally sound way. We also agreed to maximize the beneficial use of dredge material and to develop a coordinated permit process. Our new Dredged Material Management Office (DMMO) has an office in the Corps.

All the agencies meet together twice a month to review all projects. The BPC received Vice President Gore's hammer award for the creation of the DMMO. We hammered down a plan. So, we have one dredging application which must receive the sign-off from about eight or nine agencies somewhat all at once. It's better than it was. But, of course, it's not perfect yet.

So, the LTMS process took ten years, and cost \$16 million dollars. The final product was a joint state/federal LTMS which adopted the 40/40/20 disposal strategy. 40 percent of the 3 million cubic yards of material dredged in the bay must be taken to a deepwater ocean site 55 miles from the Golden Gate Bridge. 40 percent should be taken upland for wetland restoration and reuse. We didn't have any upland sites at that point, but that was the target goal. And 20 percent may be disposed of in the bay. The goal

over a twelve-year period is that the capacity of Alcatraz would be scaled down to about 1 million cubic yards a year.

Last year, we put barely 2 million cubic yards of material in the site and the balance of the material went to the ocean. Today we have a new generation of upland sites being planned. So, we have made a lot of progress on the 40/40/20 disposal plan already. The other important project, which is called new work dredging, is the deepening of the Port of Oakland. BPC has been successful in facilitating the deepening of the harbor from -38 feet when we were first organized in 1983 to a -42 feet which was completed a couple of years ago.

Congress authorized the -50 foot project two years ago. And most of that material, 12 million cubic yards, is going either to the ocean or to a wetlands restoration site. So, we have made huge leaps in progress to consider both environmental and economic objectives hand in hand and to show that we can reuse dredged material rather than just dumping it in Alcatraz and hope that it disperses.

Something happened. Just as the LTMS EIR was published, we discovered something new in the Record of Decision. The U.S. Fish and Wildlife and the National Marine Fishery Service hereby had written an entirely new section entitled the Programmatic Consultation. The wildlife agencies were announcing that they have analyzed and produced their biological opinions on the multiple species of fish and wildlife that are endangered in the San Francisco Bay region and delta.

Further, they have determined that they could issue a jeopardy opinion on this LTMS process unless dredging is conducted according to new mandates-- seasonal time periods.

Well, BPC members had only 30 days to comment on the new 100-page addition. We said, wait a minute, what happened here? We just completed an excellent cooperative process, and all of a sudden a new regulation appears: windows. We had been used to a 3-month herring restrictive period, Dec. 1 -March 1 for many years, but we were staggered by the listing of the multiple species and resultant overlapping restrictions.

So, that is the history of dredging, LTMS, and windows. What we are worried about with the programmatic consultation is the legal issue which we really haven't honed in on. There is a strong probability that these windows are an underground regulation. The Endangered Species Act was not set up to stop progress, and the agencies will tell you that. They give you opportunities. If an action is supposed to cause a jeopardy, then you come up with reasonable and prudent alternatives, and/or mitigation, but there's no alternative to not dredging. You have to dredge.

So, we think this is kind of an insidious development, and some of our members want to file a lawsuit. However, discretion is the better part of valor, and so we have decided that is more prudent to work with them. We're not ready to file lawsuits yet, but

some of the industries in the bay are very concerned that NMFS has really held the Corps hostage.

The Corps has to make permanent decisions, and they are the action agency, and they are actually held up right now by these windows.

So, what have we done about this? We are asking the agencies to commit to a process just like they did for the LTMS. This is really a test of the LTMS in operation. So far, they are willing to work with us because it appears they understand that if all your dredging is being squeezed into three months, it's obvious that this can't be.

However, we have no leadership. We don't have the right people. And when I went to Jerry Schubel's workshop last year, I said okay, this is something that really has to be instituted for the bay. And now I'm asking PIANC and the National Academy of Sciences to help us develop a couple of regional demonstration projects. I think New York, and San Francisco Bay could be excellent candidates to demonstrate how to move past the scientific muddle.

The other point that I want to make is I was very much taken with Charles Simenstad's point about looking at this issue from a landscape context. In 1990 we were able to overturn some dredging stoppage by pointing out to the National Marine Fishery Service that the real culprit for what they thought was an adverse impact from dredging on the winter run with the salmon was actually a drought in the delta.

And the drought in the delta was having more of an effect than dredging could ever have had. We did our own scientific analysis, and we also called in our state senator. He convened a multi-agency group and said, "look, here it is. You've got to keep dredging going. Is this really what's happening to the salmon?" And that worked.

I want to conclude and tell you that it's really an honor to be here today at PIANC. I've been a member for several years and have worked with the many PIANC ports and industry members. PIANC has always had an exceptional technical expertise. To me it's the engineers and the scientists that can really help this process by pulling together some political commitment as well.

With PIANC's help, we can elevate our nations' ports and related maritime industry to a national economic priority. Also we can hold up our record as sound environmental managers leading the way for responsible environmental regulations. Thank you.

